

ANSWERS

To the Petition presented to the

HIGH COMMISSIONER His GRACE,

And the Honourable

ESTATES of PARLIAMENT.

By *Alexander Monro of Bear-Crofts.*



BEFORE the Answerers propone any Legal Defences, they beg leave to represent some things in the matter of Fact, which shall be done with all brevity possible, and may contribute to clear the Parliament, and to make appear how far what is desired in the Petition, is contrary both to the known principles of Law, and the common Rules of Justice.

At the Erection of the *Colledge of Justice*, by the Constitution there were only two Clerks appointed, which two and their Servants did serve the Lieges, until about the year 1594: at which time there was upon special considerations, and by the expresse consent of the two Clerks then serving in these two Offices, a third Office then gifted by Sir *John Skene* then Lord Register, in favour of Mr. *Alexander Gibson*, and the said *Alexander* admitted thereto, by the Lords in presence of King *James the Sixth*, and who judicially declared his Royal Intentions of gratifying the other two Clerks for their said consent; All which appears by an Act of Parliament, dated the 18 day of *May*, and the Gift and Act of Admission dated the 14 of *December* that year, the exact doubles whereof are produced.

It is true, that thereafter in the year 1621: all the three Clerks being very Old Men, and unable for the Service by reason of their great Age, and of the continual pains and attendance required in that Employment, they were by the Lords of Session permitted to bring in their Sons to assist them in their respective Offices: But as this was done at the earnest Request of their Fathers, So by Act of Session in July that year, which is ratified in Parliament, and ordained to have the force of a publick Law, in the said Act, it is Statute that there should be no more than three Clerks of the Session, and each in his Office, with a Clause discharging the Clerk Register, or his Successors to gift; and the Lords of Session to admit any more than one to ilk Office in all time coming, unless it were at the earnest desire of the Clerk serving in such an Office, and no otherwise: and in that case, the one should serve only in the absence of the other, as is clear by the Act of Parliament extant upon Record; Nor is there any legal Warrant either by King or Parliament,

ment, for appointing of two Clerks in each Office ; untill the same was obtained by the Viscount of *Torbet*, then Lord Register, in a letter from his late Majesty *Charles the 2d*: proceeding on the consent of the other Three Clerks recorded in the Books of *Sederunt*, Anno 1682: and confirmed by an Act of Parliament Anno 1685. For the Sir *Archibald Primrose* in Anno 1661: finding that (before he obtained the Gift of the Registers Office) his Majestie had disposed of the three Clerks of Session's Offices, in favours of Sir *John Gibson*, Mr: *Thomas Hay*, and Mr: *John Hay of Hayston*, and that thereby he was disappointed of the Compositions he expected from the Clerks; He did surreptitiously insert a Clause in his Gift, which might seem to import a power of substituting more than one Clerk in ane Office, and on that pretence did impose another Clerk in each Office; which clause nevertheless bears a quality that it should take effect no longer, then it should appear to conduce for the good and benefite of the Lieges; Yet the conjoyning of the other three Clerks, having proceeded without desire, or consent of the Clerks formerly in Office; it was done in plain contradiction to the Act of Parliament, and so that clause tho it had wanted the quality could be of no import without the Act of Parliament had been first rescinded, and least the Act of *Sederunt* which is confirmed by that Act of Parliament (being in the custody of the ordinary Clerks) might have prejudged him, the whole book of *Sederunt*, wherein that Act in the year 1621: was insert, has been abstracted and taken out of the way, which is wanting in the Registers to this hour. And to gratifie Sir *John Gibson*, (who was only able to oppose his Design) he did conjoyn his Son with him in his Office, without exacting any Composition from him; and so they continued untill that Mr. *Lawrence Scot of Bavillay* died, and knowing that Mr. *John Hay* who was the Survivor in that Office durst not oppose his Design, he joyned the Petitioner (being his Cusin) with him, in it, without exacting any Money from him for his place; In which Office he continued officiating with that insolence (because of his Relation to Sir *Archibald Primrose*) that he treated his Colleague rather as a Servant than his elder Brother, untill the year 1674. that he became likewise troublesome to the Lords, and was the great occasion that moved the Lords to desire that the Clerks might be reduced to the number of Three, which was the number appointed by Law, and did occasion K: C: 2d: to write that Order to the Lords of Session, to Reduce the number of the Clerks of Session to the number of three, conform to the Ancient Constitution; But to do it with that Equality and Justice, that he appointed that the Lords should modifie such a sum as they should find just to be payed by the Clerk that was to continue in the Office, to the Clerk that was to go out, which accordingly the Lords did, and the sum modified was 7000: Merks (which was as much as ever the half of these Offices was valued to before that time) and was truly the just value of the place; Albeit since the value of these places, as of all other places about the Colledge of Justice are risen; partly by the multiplying of business, and partly by the multiplying of Young Lawyers, who are desirous of such places, for improving them in the knowledge of the Laws of the Kingdom, and making them capable of greater preferments: So that what is given more than 7000: merks for any such place, is *pretium officii*; And what ever bustle or noise the Petitioner makes now, by complaining upon the injurie done him, by the turning him out of his place, and the allowing him to small a price for it; it seems by his accepting the price, and granting a Discharge of it to Mr:

John

John Hay in most ample Form ; (Not only Discharging, but freely releasing and giving from him, and his Successors, to and in Favour of Mr. John Hay, and his Successors, his Right as one of the Clerks of Session, and all the Immunities, Profits, and Casualties belonging to the Office, with Power to him to Intervene with, and Dispose thereof at his pleasure;) that he was not of that Opinion then, for if he had had any Design of what now he pleads, *Viz.* of getting back his place. He is not ignorant of Law, but that he would have refused to accept of the price, and would have protested for Damage, and raised Summons to have put Mr. John Hay and his Successors in *malafide* to possess, or give Money for that place, to which he judged he had Right by Law. By all which it may appear, that there is greater ground to alledge that the Petitioner was Illegally and Unwarrantably put in that Office, to which he is now pretending Right, then that he was illegally and unwarrantably removed from it.

And it is remarkable, That the Petitioner having moved this his pretention in the late Meeting of the Estates, he was laughed at; And it was told him roundly by a person of great Knowledge and Honour that presided there, *That he was a Fool to trouble the Meeting, by seeking back a place that he had sold, and taken Money for.* Yet the Petitioner did not rest here, but in the scrol of the Act, appointing a Commission for considering and Reducing Fines and Forfeitures, he *Viz & Modis*, did get a Clause adjected, relating to persons that were put out of their places, which clause was by express Order of my Lord Commissioner, his Grace, in plain Parliament expunged out of the Act, by reason that his Grace *had no such Instruction.* And his now troubling the Parliament for the third time, may evidence that albeit the Petitioner has not much Law on his side, yet he has abundance of confidence; And believes, that either the Parliament does not understand Law; Or that by Importunity, they will be obliged to grant that which in Law and Justice should not be granted.

Albeit what is said in matter of Fact, may seem sufficient to secure the PARLIAMENT from any farther trouble in this matter, the Defenders will give obedience to the LORDS of the Commission their order, in making Answers in point of Law to this Petition, and according to all Form of Proces, will begin with the Dilator defences. *viz.* That there can be no Proces before the Commission on this reference. *1mo.* Because the Reference was not Legally made, in so far as the Petition whereupon the Reference was made, was not considered, nor so much as read in PARLIAMENT, and the Reference being an Act of Parliament should have been voted, at least the Libel whereupon it proceeded, should have been heard and considered in PARLIAMENT, which (as all the honourable Members of the Commission know) was not done.

2do. The subject of this Reference being, *The turning out of the Petitioner out of his Office;* that matter being by express order of My LORD COMMISSIONER His Grace expunged out of the Act, whereby this Commission was constitute: It cannot be considered by the Commission, without a great Inroad upon His MAJESTY, and His Authority, and a Reflection upon His Commissioner. And it cannot be imagined, that if this Petition had been Read, and Considered by the PARLIAMENT; (as it should have been) that the PARLIAMENT would have made any such Reference, but in place thereof, would have rejected the Bill.

3tio. There can be no Proces sustained on this Claime, because all Parties having Inter-

(4.)
are not called: viz. The Lords of Session, who are the Persons who did
the pretended Injustice of turning the Petitioner out of his Place, especially seeing there is
a Conclusion alleged; as to which none of the Persons called could have the least acces-
sion, and so are not the proper Contradictors. 2do. Sir Thomas Murray's Representa-
tives who was Register for the time, disposed of this place to Mr. Roderick Mackenzie, and
did get the Composition for it. 3tio. The Viscount of Tarbat, who granted Mr. John Mac-
kenzie and Mr. James Justice Gifts, and did get their Compositions, all whose Interests
are most clear and evident, and therefore must necessarily be called: for it were against
the principles of Justice, as well as against the known Form of all Judicatories to allow
Processes until all Parties concerned be called, for these Persons not called, may have De-
fences that would exclude the pursute, and would defend those called, and so would ex-
clude the Persons called, when they come to pursue for that Relieff, which the Law al-
lows them against their Authors.

4to. The Clerks having acquired their Gifts *Bona Fide*, and for onerous Causes from
those who were in *Titulo* to dispose thereof upon Legal Vacancies, by Consent, Death, or
Dimission; and all without any Interpellation to them, or Intimation of the Petitioner's
pretence to any such Office, whereof they have continued in the uninterrupted possession,
much more than seven years, they have by Law the Benefite of a possessorie Judgement,
so that *esse* the Petitioner's right were valide (as it is not) they could not be removed until
their Rights were reduced, which cannot be done upon this Petition, wherein there is no
Right called for, nor reason of Reduction lybelled; nor is there any warrant or remit to
the Commission, for discussing any such Reduction, though it were intended.

Albeit each of these four dilator Defences be sufficient to cast this proces; yet to clear
the Honourable Members of the Commission, how Unreasonable and Illegal, the thing here
desired, is, adhering to the Dilators, the Defenders offer a short view of the peremptorie
defences, and for that effect shall consider the two Articles of the desire of the bill separat-
ly. viz. 1mo, That the Petitioner may be restored to his Place and Office, of being a
Clerk to the Session. 2do, That the Defenders may be decerned to pay him the Emolu-
ments of that place, since he quite the same.

And shall begin with the second, viz. The Emoluments of the place; as to which the
Lords will be pleased to consider, that the present Clerks were not the Petitioner's imme-
diate Successors; but Mr. Roderick Mackenzie came into the place several years thereafter,
upon Mr. John Hay's Dimission, and did possess without any Interruption, during all his
time in that Office, which was for the space of twelve years; and being *Bona Fidei* Posses-
sor, by the common principles of Law, *Fecit fructus suos*, albeit the Emoluments had been
Fructus naturales, as Rents of Lands, but especially in this Case, where there is no Pension
nor Fee annexed to the Place, but only money given them by their Clients for their Service,
and hardly proportionable to that great pains and attendance they are at for them, so that
supposing the Petitioner to have been Illegally removed (as he was not) and that he had
not homologat (as he did) by this Rule, and the Analogie of Law, a Trades-man that
is Illegally and Unwarrantably ejected out of his Shop or Work-house, might not only
crave to be repossessed of the Shop, or Work-house, but might likewise crave all the mo-
ney that was gained in that Shop, the time that he was out of it, by any other Work-man,
who *Bona fide* had taken the Shop for Mail from the Lands-lord.

It

It is then humbly remitted to the LORDS to consider how far the Petitioner is, especially considering that the Petitioner all the time he was out, could hardly be done, considering the groundlessness of the Petitioner's Claim to the Office itself, which is next to be Answered,

As to which the Defenders will not trouble the PARLIAMENT, with what has already been Represented in the matter of Fact, asent the Illegality and Unwarrantableness of the Petitioner his coming into that Office: But giving and not granting that he had never so good Right to his Place, it is most consistent with the principles of common Law, and the Practique of all Nations, That the Supreme Magistrate may for a publick Convenience, oblige private Parties to sell, dispose upon, or quite their Properties; much more may be suppress publick Offices, and Places which are erected only for the publick Good, especially where there is a reasonable Satisfaction made to the Partie lesed (as in this Case) And this Conjunction of two Clerks in one Office, being at that time established by no Law, nor ACT of PARLIAMENT; but on the contrary, expressly discharged by a standing Law, and ACT of PARLIAMENT, and brought in only by His MAJESTY and the LORDS of Session their Tollerance, it is absurd to pretend that His Majesty and the LORDS of Session, might not alter the same if they did judge it convenient, especially when the Surreptitious clause in Sir Archibald Primrose's Gift, which is the only Foundation of the Petitioner's pretended Right, bears that express quality. viz. *Prout emolumento subditorum in exequendis dictis officiis conducere videbitur.*

2do. The present Clerks in that Office, and their Predecessors, having acquired and possess the same as said is, since the year 1676, albeit the Petitioner's Right could subsist, (as it cannot) they are at least in no worse Case than the Petitioner, *Et in dubio potior semper est causa possidentis.* But,

3tio. The KING's Letter, and the Sentence of the LORDS, for turning out the Petitioner, with the other Letter, and consent of the Clerks, in favours of the Viscount of Tarbat, with the Viscount's Gift, being all Recorded in the Books of Sederunt, and not only most agreeable to the said ACT of PARLIAMENT 1621, and the standing Law of the Kingdom ever since, but likewise the whole with the Gifts following thereupon, being all of now Ratified and Confirmed by the ACT of PARLIAMENT 1685, any Person was in *Optima fide*, to have followed the publick Faith, and given his money for a purchase of that Office, since that *Gesta quae in publica monumenta translata sunt, habere debent perpetuam firmitatem.* L: 6: Cod: *de re judicata*: Especially considering that the Petitioner was so conscious of the Justice & Legality of the ACT of Sederunt, that for 14 years after he did not offer to quarrel the same, so much as by a Summons? albeit during a great part of that time, not only were these LORDS of whom he most unjustly complains for that Act, out of all power to defend it, if it had been any wayes unjust; but likewise those who succeeded them, (as he cannot deny) were very ready to have done him all the Justice imaginable, if he had applied against it.

4to. *Esse*, that ACT of Sederunt had been Unwarrantable, and Unjust, which no Indicture will ever find it was: Yet the Petitioner cannot now be heard to reclaim against it, in respect he has Homologat the same, by his accepting of the Price imposed by the LORDS as the just Avail of his Place, viz. 7000 Merks, and his granting a Discharge thereof

...and Successor therein Mr. John Hay; and that a Sentence tho never so unjust, may be Homologate by the Party against whom the Same was pronounced, was never yet contraverted by any Lawyer; and whereas the Petitioner asserts in his Bill, that Lawyers advised him to take the 7000 Merks, and told him it would not prejudice him in his quarrelling the Lords Sentence, or craving to be reponed to his Place. The Answerers beg leave to assert, that there was never a Lawyer who knew so much as the principles of Law, that could give such Advice, or can assert, that any Sentence against private Parties (tho never so unjust) may not be Homologate by deeds of Homologation, much more contravertible then the Deed alledged, which as it is clear by the Roman Law, wherein it is a received Rule that, *Standum est rei judicate nisi a sententia appellatum sit. L: cum prolati. 32: ff: de re judicata*, And that they cannot Reclaime *Qui quolibet modo sententia acquieverint, nec enim instaurari finita, rerum judicatarum patitur autoritas. L, ad solutionem: 5, cod: eodem*. And many other Texts which might be cited, but *Paulus* in *L: si quis: 51: §: 1: ff. de re judicata*. does best meet the present case in these words, *Et puto improbum esse eum qui velit iterum consequi quod accepit*, which is very well translated by the Old Scots Proverb, viz. *That it is ill manners to sell the Cow, and sup the Milk*. So the same is not only confirmed by the concurring Judgments of all the Lawyers that ever wrote upon that Matter, but likewise by the Law of this Nation, and the constant current of our Decisiones.

sto. And which puts the matter beyond all Cavil, the Petitioner did not only homologate the Sentence by accepting the price modified, and granting ane Discharge thereof, which was sufficient to have denuded him; but *ex super abundantia*, He freely Renounced and Overgave from him and his Successors, to and in Favours of Mr. John Hay and his Successors; his Right as one of the Clerks of Session, and all Immunities, Profutes, Casualties, and Emoluments belonging thereto; with power to him to intromet therewith, and Dispose thereupon at his pleasure. Which is all that he was able to have done, and is as absolute a Dimission as ever was made, and would certainly have excluded him from all pretentions thereafter to the Office, albeit he had never received a Sex-pence therefore; Nor can the pretence of Concussion to which he now flies, make any thing for the Petitioner, who was so far from any Deed which might have put the Acquirers of that Office in mala fide; that he did tamely submit, and give Obedience to the Sentence, without so much as propounding a Defence against his Removal before it, or Reclaiming by a Bill against it, after it was pronounced, which of it self is sufficient to take off the Concussion.

But seeing the Petitioner seems to lay the whole stress of his Affair upon this pretence, of Concussion, The Defenders beg leave to give it a fuller Answer, and for brevity shall not insist on the general Grounds of Law, whereupon the Defenders ought to be Assoiled, Albeit there had been Concussion in the matter, but shall descend to consider the case in hand more particularly.

As to the which, the Sentence it self must be considered, which consists of two distinct Articles; 1mo. *That Sir Alexander Gibson, Mr. Thomas Hay, and Mr. John Hay should continue in their respective Employments*; Upon which Article there might indeed have Execution followed, but not against the Petitioner, if he had not voluntarily withdrawn. The second Article of the Sentence is, *That the three Clerks that were to continue in their Offices, should pay the sum of 7000. merks, respective to the Clerks that were to go out*. Upon which Article, there would never have followed Execution against the Petitioner, but the Execution

cution on it, was to proceed only against Mr. *John Hay*; so that it is hardly intelligible how the Petitioner can pretend Concussion, when he can instruct no Resistance, or Fiction on his side, not so much as proposing a Defence, or by a Bill Reclaiming against the Sentence; Or that there did so much as a Charge proceed against him upon the Sentence, before he did give Obedience; So that albeit the Sentence had been never so unjust, there can no Concussion be pretended, no more than a Rape could be sustained at a Womans instance, that could instruct no Violence against her, or Resistance on her part, but were pursuing upon the general Topick, That it is presumed, she was forced, because it was not her Interest, nor Inclination to prostitute her self.

2d. As Concussion can in no case be presumed, but must still proceed upon a clear Probation, much less in this case, where the pretended Concussors, viz. The Lords of Session had not interest to Concuss. 2. Where the Authority of the Supreme Magistrate, viz. The King was interposed, and not in commanding a thing contrary to Law, but commanding a positive standing Law to be put in Execution. 3. Where their Sentence received Obedience without any Execution.

3d. Supposing the Sentence to have been unjust, and the Petitioner had proposed Defences, and made all the Opposition imaginable, and that by Execution upon the Sentence he had been forced to give Obedience, must every unjust Sentence, whereupon Execution has followed, import Concussion, and so vitiate the Subject whereupon the Sentence did proceed, that it could not be acquired *bona fide* by singular Successors, albeit it should run through never so many hands: this Doctrine would unbinge all the security in the Nation. And what ever be pleaded in this case, Concussion was never before pretended, but where Men of great power had forced mean Men from their Rights, for the great Mens own behoof, and where Threats and Deeds of Violence were qualified against the Concussors.

4th. Albeit there had been Concussion here, (as there was nothing like it) could not the Right of pursuing that Concussion be discharged, if the Petitioner was unjustly and violently put out of his place; Did not the Right of Recovering his place, remain in his person after he was put out? Or does he now pursue upon some new Right: If it was (which will hardly be denied) then he has Resigned and Transmitted the same in Mr. *John Hay* and his Successors favours, in as Ample and full Terms as ever a Right was Resigned, and has not only received 7000: Merks, and Discharged the same; which Mr. *John Hay* could never have forced him by the Sentence to have done; but likewise has Resigned all the Right and Interest he had, or could pretend to that Office. in favours of Mr. *John Hay* and his Successors.

And it is frivolous to pretend, That the Petitioners necessarily obliged him to accept of the 7000: Merks, and to grant the said Discharge and Dimission: For albeit it had been so, the Defenders did not, nor were not obliged to know the same; But it was far otherwise for the Petitioner, *At that time he had a good free Estate, was then, and still is Commissar of Strivling, was an Advocate, and did put on his Gown upon his quitting the Clerks Office;* which (considering his great parts) is fully as good as the half of a Clerkship; And he has had other Employments since, in which he has been very successful. But it is like, that the Petitioner did forget that Paper he granted to Mr. *John Hay*; Otherwise he is too much of a Gentleman to have intended this Proces. *From all which it is evident, That the Desire of the Petition, is not only Illegal and Unjust, and so ought to be refused. But also, that*

the Petitioner should be censured for offering it to the Honourable E. S T A T E S of P A R L I A M E N T, which believed to be done by him, As believing either that the known Principles of Law, for deciding this case, were not obvious to the P A R L I A M E N T; Or otherwise, that to gratify the Petitioner in his unjust pretences, The plurality of the Honourable Members would go over the belly of all that was ever understood to be Law and Justice.

And it is humbly Desired, and Expected, That Your Graces and Lordships, will according to Your A^d, modify such Expences as You shall think Reasonable to be payed by the Pursuer to the Defenders, for the Trouble and Expence they have been put to, by this most Unjust and Calumnious Pursute.

THE
ACT of SEDERUNT

Anent the

CLERKS of SESSION.

DECIMO OCTAVO MAII 1594.

*Sederunt Domini Sessionis, Urquhart, Barnobarroch, Menmuir, Tungland, Hally-
rud-house, Clericus Registri, Advocatus, Quibittinghame, Secretarius
Innernocty, una cum, &c.*

IT is statute, That nae shall be present in the Inner-house, under pretext of whatso-
ever Priviledge, Clerk nor Servand, fra the LORDS enter to the Reasoning or Voting
of any Cause, except aue of the principal Clerks, wha has the charge of that Process whilk
is to be Decidit: And the other principal Clerk to sit in the Utter-house, and that during
the report of the *Interloquiter*, the principal Clerks, or any of them that was in the Utter-
house at the Reasoning of the Cause, shal be baith present, and nae of their Servands, nor
na others.

ADMISSION

OF

M^R. ALEXANDER GIBSON

CLERK of SESSION.

XIIIItho. DECEMBRIS, 1594.

*Sederunt Domini Sessionis, Urquhart, Culross, Menmuir, Barnobarroch, Drum-
cairne, Hally-rude-house, Tungland, Maincairny Clericus Registri, Quibit-
tinghame, Advocatus, Secretarius, Clericus justiciarie, Newbottle, Domi-
nus Thirlestane Cancellarius, una cum, &c.*

THE whilk day in presence of the KING's Majesty, and the LORDS of Council, com-
peared Mr. Alexander Gibson Writter, and gave in the Supplication after specified;
A wher e

whereof the Tenor followeth. MY LORDS of Counsell and Session, unto Your Lordships humbly meant and shew. I Your Servitor Mr. Alexander Gibson, That where it hath pleased my LORD Clerk of Register to constitute me one of his Deputes, in one of the ordinary Places and Offices of Clerkship of Session, and has granted to me one Gift and Presentation of the said Office, as the same bears: Wherein Godwilling I shall Leilly and Truly behave myself, as Your Lordships have had experience of my Service of before; Beseech and beseech Your Lordships, to receive and admit me in, and to the said Office, and to take my Aith for true serving therein, after the Form and Tenor of the said Gift and Presentation, granted to me thereupon in all points, and as use is to be done in the Admission of Persons to the like Places, and Your Lordships Answer humbly I beseech.

And likewise the said Mr. Alexander produced his Gift to the said Clerkship, Subscribed by Mr John Skeen Clerk of His Highness Register, Bear and as follows Be it kend ill all Men, be this present Letters, me Mr John Skeen Clerk of our Sovereign Lord's Register, for the special Laiff and Favour whilk I had and haire to Unquhile George Gibson, one of the Clerks of Session, in the Life time, and now presently bears to Mr. Alexander Gibson his son, And having sufficient prouff of his Literare Qualification, and hability of the said Mr Alexander wherewith he may serve as one of the Clerks of our Sovereign LORD's Session, in the place and room occupied by his said Unquhile Father, he quhairs decess the said Room presently Vaikes, and becomes in my Hands: THEREFORE to have made, Create, and Constitute, Like as be the Tenor hereof, I make Create and Constitute the said Mr Alexander one of my Deputes, in one of the ordinary places of Clerkship, before the saids LORDS of Session and Colledge of Justice irremovable, during all the dayes of his lifetime Give and, Grant and, D. spon and, to the said Mr. Alexander the said Office of Clerkship to be als freely and peaceably Brnickit, Usit, and occupied during all the dayes of his Lifetime as said is, with all Fees Casualties, Commodities, Profits, and Duties whatsomever belonging thereto, as his said Unquhile Father occupied & possesse the same in his Lifetime & as any other Clerk of the said Session presently occupies, or shall hereafter possess and occupy in any time coming: The said Mr Alexander, his entrie to be and begin at the Day and Date of this presents, and fra that forth to endure during all the dayes of his Lifetime as said is: Requiring herefore the LORDS of Counsell, to receive and admit the said Mr Alexander in and to the said Office, and to take his Aith and true Administration therein as use is. Subscribed with my Hand at Edinburgh the xiii day of December, 1594. Before this Witnesses Mr William Scott and John Hay, twa of the ordinar Clerks of the said Session, with others Witnesses, Sic subscribitur JOHN SKEEN. Cles. Regi. Whilk supplication and desire thereof, with the Tenor of the said Gift, as likeways Mr William Scot and John Hay, twa of the ordinar Clerks of Counsell for their Interesse in the said matter, being heard in presence of His MAJESTY, and the saids LORDS and they therewith being reply advised; The saids LORDS of Counsell of the special Content and Affair of the saids Mr William Scot and John Hay given hereto has admitted and received the said Mr. Alexander, in and to the said Office, conform to the said Gift and desire of the said Supplication. Wha being present, made Faith that he shall Leilly and Truly serve therein, and discharge the same, and shall observe the Statutes and Acts of the Session, whereupon the said Mr. Alexander askit Instruments.

The whilk day the KING's Majesty in presence of the LORDS of Counsel declares, That, in respect Mr William Scot and John Hay twa of the ordinar Clerks thereof, had at His Highness Request and special desire, consented to the Admission of Mr. Alexander Gib-

sent to an of the ordinarie Places and Churches of the Nation, to be presented to the State Clerk of His Highness Register; that therefore the said Mr. William and Mr. John, with ane sufficient Company for that purpose, be

ACT OF PARLIAMENT

In Favour of the

CLERKS of SESSION.

QUARTO AUGUSTI, 1621.

IN the Parliament holden at *Edinburgh*, the fourth day of *August*, the year of GOD, a thousand six hundred and twenty one years. Our Sovereign Lord and Estates of Parliament, understanding that there is an Act and Ordinance made by the Lords of Counsel and Session, concerning the number of the Clerks, who shall be hereafter presented and admitted to have place to serve in Session, as Deputes to the Clerks of Register in that Court, whereby the number is restrained to three Clerks. And Declaring, that it shall not be lawfull to the Clerk of Register present nor his Successors in that Office, in any time to come, to present any more Clerk Deputes to them in Session over the number of three, nor to adjoyne any fellow to any of the three, without the express Advice and Consent of that Clerk to whom the other is intended to be joyned, and no otherways, as the Act made thereupon more largely propothes; Whilk Act his MAJESTY and Estates, now after mature deliberation, considering the same to tend to the good of his Majesties Subjects, Decerns and Ordains to be of full Force and Effect, and to have the Strength and Authority of an Act and Statute of Parliament, and to be Observed, but alteration be the Senators of the Colledge of Justice, and be the Clerk of Register present, and his Successors in that Office; according to the tenor of the said Act in all time coming, Whilk his Majesty and Estates be the Tennor hereof, Ratifies, Approves, and perpetually confirms in all poynts for now and ever; Together with the Gifts and Provisiones of the three Offices granted to the Clerks presently serving in Session, and to their fellows conjunctly and severally admitted in the places with them, after the Form and Tenor of the several Gifts expedite to them, and longest liver of the twa persons, provided thereby in all points, And whilk are holden as heire word by word insert, and Declaired to be good valid and effectual securitie to the persons provided, and everyane of them for bruing of the saids Offices; And all the Priviledges and Duties thereto belonging, dureing the lifetime of the langer liver of them, and

4.
in the said provisions, And Ordaines the tenor of the said Act to
be, That none pretend to the said Office, as the same is conceived, That none pretend to
the said Office, in any time to come; Whereof the Tenor followes, **THE LORDS** of
Council being now mindful that at the earnest Desire of the three Principal Clerks of Ses-
sion, and with their expresse consents they have lately receaved in ilk one of the three Of-
fices and places possesse them, one Fellow-Clerk, provideit conjunctly and severally with
ilk principal Clerk, who formerly served in the Office allon. And least by this manner of
proceeding, any inconstitucion should thereby arise, as gif ilk one of the saids three Of-
fices were dismembrit; And that the twa provided to each place were admitted to twa
several and distinct places, or the number of the Clerks thereby increased, and which is
nowayes intendit, but be the contrair, It is the expresse will of the saids Lords. Likas
they thereby Find and Declare, that their Authorizing and Providing of the Provision
given to twa persons admitted in ilk one of the saids three Offices, tends allenarly to esta-
blish the Right and Security of the indivisible place and Office in the person of twa provi-
der, and the longest liver of these twa, to the effect the one in absence of the uther may ex-
erce the Function of the Offices; And that the Survivor may after the others deceass, brueik
and enjoy the samen beal benefite and priviledge thereof as Amplie as any Clerk of Session
has done of before, and conform to the tenor of the Gifts granted thereupon in all points;
It being alwayes heirby Provided, That the number of the Offices in all shal not excessee
over three. Likas, It is Declared, That it shal not be permittit to the Clerk of Register
present or his Successors in any time to come, to joyn any person with the Clerk, serving
in any of the saids three Offices, or to provide twa persons to gadder to any place; (*Except
by the Advice and Consent, and at the Desire of the Principal Clerk, serving for the time in the
place, and no otherwayes,*) seing this lair conjunction of the foresaid twa persones in one
place whilk is now approven, proceeds and hes tane effect at the earnest mediation of the
three principal Clerks serving in the saids Offices; And is procured by their travels, and
warranted with their expresse consents, Whilk otherwayes without their consent could ne-
ver have been found valiable nor lawfull; And whereunto the Lords are the more movit
to condiscend at the time, both in regard of their experience of the long service, dutyfully
discharged be the saids three principal Clerks, whaise greater Age now requires some sup-
ply and release in the burdens of their calling. And also in respect of the houper conceavit
from bypast pruv of the still continuing of the samen sufficiency in the persons adjoyned,
Whilk has to fore been apparent in themselves and their Antecessors of good reputation.
And **THEREFORE** the saids Lords haveing at lenib, weel considered that the plurality of
Clerks, gif the samen shal excede and excessee above the number of three, cannot es-
cape bot to prove mare chargeable to the Subjects, and to breed confusion and empesche-
ment to the Lords in examining and decideing of maters, moved before them after ma-
ture deliberation, And with expresse Advice of Sir George Hay of Kinsfarnes Clerk of Register,
who tending the weel publick, whilk is the aime and end of this Ordainance maire
nor his own private entress, hes willingly Assented thereto: **FINDS, DECERNS and
DECLAIRES**, That they will not admit nor receave in any time coming any mae princi-
pal Clerks to serve in Session attour the number of three, whilk number they Find and De-
clare to be sufficient for the dispatch of all Affairs belonging to that Office, with least
dis-

difforder and greatest ease ; and becaufe of his Majesty's
with consent foresaid, Finds and Declares, That it is the
of Register present, nor his successors to that Office hereafter to be
be gift nor other grant any mae Deput Clerks to serve in Session, Council,
Except the number of three allenaily, To wit, one for ilk one of the three
mae, And this above written Ordainance, The Lords Finds and Declares, that they
observe in all time to cumm as ane statute, and inviolable Decree, whilk they
to be enacted in their Register ; And to the whilk they humbly intreat his Maj. by in-
terpone his Authority and Approbation, and that his Majesty might be pleased to give
Warrant for confirmation of the samen in his ensuing Parliament, being ane ordina-
tion tending materially to the benefite of his Majesties subjects ; And for the better
credit of this Court ; At Edinburgh the third day of July, in the year of GOD, one thousand
and six hundred and twenty ane years, sic subscribitur, Al. Concells 1: P: D: *Moff,*
Saint Andrews, Landerdail, Carnagie, Areskyne, George Hay, Welipbant, Killib; 2: *El-*
phinstoune, sir Robert Melvil, R. Cockburn, Daig, J. Cockburne. A: Hamilton, Sir
kyne, Weymes, sir I. Skeen, Al. Hay, With this Declaration, That gif any Clerk should
be premoved to any place in Session or Council, That he shall not Execute that Office
any mae. *Extractum de Libris Actorum Parliamenti, per me*

HIS MAJESTIES LETTER,

To the

COLLEDGE of JUSTICE,

Annent the

CLERKS OF SESSION, &c.

MAY 24th. 1676.

Recorded in the Books of *Sederunt*, 20th. June the laid Year.

CHARLES R.

RIGHT Trusty, and well beloved Cousins and Counsellors, Right Trusty, and
well-beloved Counsellors, Trusty, and well-beloved, We greet you well. We
have often evidenced Our Affection to, and care of you, the Senators of our Colledge of
Justice,

(10)
...with the Distribution of Justice, and the preservation
...Our Subjects in that Kingdom, according to Law, and are
...equal and expedite procedure in Justice to all Our Subjects, which
...foreigners can perform to Us; so We will suffer none of Our Sub-
...your Procedure, much less those who serve before you; and by your Fa-
...and Warrant, have the privilege to procure and plead for others, who (if they
...be permitted to defame your Sentences, might prove the unhappy Instruments to
...Honour and Confidence, which hath been always attributed to that Senate, by
...and Strangers; and might diffuse the leaven of *Malcontent* amongst our People,
...Rights and Interests were not securely lodged, and thereby make them more
...evil Impressions and desirous of change. And We do require you by all means,
...and prevent all *Mutinious* Conferences, which you have prudently adverted to, and
...by your Act of *Sederunt* of the 5 of *January* last, wherewith We are very well satis-
...And We do let the Advocates and others of the *Colledge of Justice*, to be ordered and
...by you in all things relating to their Employments. And We do farther require you,
...and punish all combinations, and unwarrantable correspondences amongst Ad-
...whereby they may forbear or refuse to consult, plead, or concur, with those who
...faithfully adhere to our Service, and did continue in, or early return to their Station.
...And as a further evidence of our Royal Favour, We do ordaine, that the three Clerks of
...Session, who do expedite your Decrees, shall be nominate by the Senators of Our *Colledge*
...of *Justice*, in all time coming; and that they be subject to their censure, and that the Clerk
...of Register give them Deputations from time to time; and that in case of Vacancy of the
...Clerk of Register's Office, We do Authorize the said Clerks of Session, to act by your
...warrant as they shall be ordered by you, without prejudice to the Clerk of Register, of all
...other Benefite and Emoluments, belonging to, or depending upon that Office. And it
...is Our further pleasure, that in all time coming, there be only three ordinary Clerks of
...Session, besides the Clerk of the Bills, according to the ancient constitution, and that of
...the number that now serve, you make choise of the three that shall still serve. And that
...you modifie such satisfaction, to be payed by those that remaine, to those that are to go
...out, as you shall find just, and reasonable, and so we bid you farewell

Given at our Court at Whitehall the 24 day of May; 1676 years: and of Our Reign the 28 year.

Sic subscribitur, by His Majesties command,

LAUDERDALE.

ACT of SEDERUNT
In Favours of the
CLERKS of SESSION.
The 20 day of June, 1676.

THE Lords having considered that part of his Majesties Letter concerning the Clerks
of Session, Appointing three of them to be continued; And satisfaction to be given
to

to three of them who go out ; they had a choice of
 one of three chambers, and therefore he was appointed
 in that chamber wherein his Father and he served ; And
 that chamber wherein he and Robert Gibson served ; And
 the chamber wherein he and Alexander Gibson do serve.
 Thousand Merks Scots, to be payed to every one of the
 Colleague who Removes out of the several chambers respectively.
 ment made betwixt Sir John Gibson, and the said Mr. Alexander Gibson,
 Majesties Letter ; Which of content is Declared to be now
 hereby, but to stand in Force as formerly, in place of the
 of the other two Clerks who go out.

DISCHARGE and RENOUNCIATION

BE

ALEXANDER MONRO

TO

MR. JOHN HAY.

The 20 Day of JUNE, 1676.

BE it kend to all Men be these Presents, Me Mr. Alexander
 Monro Commislar of Sairling, Forasmuch, As the Lords of
 Council and Session be their Act of Sederunt, of the date the
 twenty day of June instant, Having Considered his Majesties Letter,
 concerning the Clerks of Session, Appointing three of them to be
 continued, and satisfaction to be given to three of them who go out.
 They found it necessar that there be one Clerk continued in every
 one of the three Chambers, And therefore the saids Lords did ap-
 minate Mr. Alexander Gibson for the Chamber in which his Father
 and he served ; And Mr. Thomas Hay to continue in that Chamber
 wherein

...served, and Mr. John Hay to ...
...and I the said Mr. Alexander ...
...did modify the sum of Se-
...be every One of the said
...to his College, who Removes out of the se-
...at the said Act of Sederunt, of the date
...fully bears. And now, being conform to the
...the said Mr. John Hay hath made payment to me of
...of Seven Thousand Merks Money foresaid, where-
...and holds me well Content, Satisfied, and
...Therefore, Wit ye me, to have Exonerated, and Discharg-
...the Tenor hereof, for me, my Heirs, and Executors,
...and Simpliciter Discharge the said Mr. John
...and all others whom it Effairs, of the a-
...of Seven Thousand Merks Money foresaid, be thir pre-
...NOW and EVER: And have RENOUNCED and
...and hereby I Renounce, and Freely Overgive from
...to and in Favours of the said Mr. John Hay,
...my Right as one of the Clerks of Session, and
...Innunities, Profits, Casualties, and Emoluments belonging
...with Power to him to Intromet therewith, and Dispose
...at his Pleasure: And for the more Security, I Con-
...thir Presents be Registrate in the Books of Council and Session,
...other Judges Books competent within this Realm, to remain
...for Conservation; And if need beis, to have the
...of a Decreet of the Lords, or Respective Judges thereof,
...that Letters of Horning, and other Executo-
...may pass hereon as Effairs. And Constitutes
My Procurators. In witness

(Witness, &c.)